

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

EDITH MAE MAY,

Petitioner,

v.

Case No. 19-CV-1442

SARAH COOPER,

Respondent.

**REPORT AND RECOMMENDATION TO DISMISS
FOR FAILURE TO PROSECUTE¹**

Edith Mae May filed a petition for a writ of habeas corpus on October 2, 2019. (Docket # 1.) On October 3, 2019, the clerk requested that May pay the filing fee of \$5.00 or file a petition to proceed without prepayment of the filing fee (*in forma pauperis*) within twenty-one days. (Docket # 3.) On October 30, 2019, the clerk sent a second reminder to May requesting that she pay the filing fee or file a petition to proceed *in forma pauperis* by November 13, 2019. (Docket # 5.) On November 7, 2019, the court received a letter from May indicating that she was mailing the filing fee (Docket # 6), but the court received no fee. On November 18, 2019, I issued an order to show cause notifying May that she had ten days to pay the filing fee or file a petition to proceed *in forma pauperis* along with her certified trust account statement for the preceding six months. (Docket # 7.) I warned May that if she failed to pay the filing fee or file a petition as ordered, I would recommend that this action be dismissed with prejudice and without further notice for failure to prosecute. (*Id.*)

¹ Because the defendant has not yet appeared and had an opportunity to consent to or refuse magistrate judge jurisdiction, I issue a report and recommendation regarding the dismissal of the petition. *See Coleman v. Labor and Industry Review Commission*, 860 F.3d 461(7th Cir. 2017).

As of the date of this report and recommendation, May has not paid the filing fee or filed a motion to proceed *in forma pauperis*. Because it does not appear that May intends to prosecute this action, dismissal is appropriate. Furthermore, May has defied repeated warnings to pay the fee or file a motion to proceed *in forma pauperis* and has failed to show good cause for her failure to do so, justifying dismissal with prejudice.

Therefore, **IT IS HEREBY RECOMMENDED** that May's petition (Docket # 1) be **DISMISSED WITH PREJUDICE** for failure to prosecute.

Your attention is directed to General L.R. 72(c), 28 U.S.C. § 636(b)(1)(B) and Federal Rules of Criminal Procedure 59(b), or Federal Rules of Civil Procedure 72(b) if applicable, whereby written objections to any recommendation or order herein, or part thereof, may be filed within fourteen days of the date of service of this recommendation or order. Objections are to be filed in accordance with the Eastern District of Wisconsin's electronic case filing procedures. Failure to file a timely objection with the district court shall result in a waiver of a party's right to appeal. If no response or reply will be filed, please notify the Court in writing.²

Dated at Milwaukee, Wisconsin this 3rd day of December, 2019.

BY THE COURT:

s/Nancy Joseph
NANCY JOSEPH
United States Magistrate Judge

² On November 27, 2019, May filed what appears to be a challenge to the denial of sentencing credits. (Docket # 8.) May did not include a case number with this filing, but the clerk's office filed it with this case because it concerns the same criminal conviction and sentence at issue in her habeas petition. I construe it as a motion to amend her petition to add a ground for relief, but because I recommend that the case be dismissed, I decline to address it further.